NO. 16170

United States
COURT OF APPEALS
for the Ninth Circuit

GLADYS LAYCOCK,

Appellant,

vs.

FRANK J. KENNEY,

Appellee.

APPELLEE'S BRIEF

On Appeal from the Judgment of the United States District Court for the District of Oregon.

C. E. LUCKEY,
United States Attorney,
District of Oregon,

ROBERT R. CARNEY,
Assistant U. S. Attorney,
Of Attorneys for Appellee.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE., 2-20-59—45

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OPINION BELOW

The court below delivered a written opinion that the plaintiff's Second Amended Complaint fails to state a claim upon which relief can be granted (R. 15-17), and pursuant thereto entered Findings of Fact, Conclusions of Law and Judgment (R. 17-19) and Judgment of Dismissal (R. 20). These documents provide that the Judgment of Dismissal shall operate as an adjudication on the merits.

JURISDICTIONAL STATEMENT

Plaintiff invoked the jurisdiction of the District Court under Article III, § 2 of the Constitution and the Act of June 22, 1948 (Chapter 646, 62 Stat. 930; 28 USCA 1331) and asserts jurisdiction of this court under 28 USCA 1291.

The appellee moved to dismiss on four grounds (R. 14, 15). Ground I asserts that the complaint fails to allege facts to establish jurisdiction over the United States of America; that the defendant (appellee) is an officer of the United States Government acting within limits of his powers under a constitutional statute, and that therefore the action is one against the United States. The court did not rule on this point.

Ground II moved for dismissal for failure to join the Secretary of the Treasury. The court did not rule on this point.

Ground III asserted the failure of the complaint to state a claim or cause of action upon which relief can be granted. The court ruled that on this ground the defendant was entitled to dismissal.

Ground IV asserted that the complaint fails to state a claim or cause of action against the defendant-appellee, Frank J. Kenney. The court did not rule on this point.

Appellee asserts that the judgment of the court below should be affirmed, but submits that Grounds I, II and IV would also entitle appellee to dismissal.

QUESTIONS PRESENTED

1. Is the power of Congress over money constitutionally limited to "coined money"?

2. Are the Regulations (3 CFR 54.1—54.70 (Supp 1958)) promulgated by the Secretary of the Treasury under the Gold Reserve Act of 1934 (48 Stat. 337, codified in scattered sections of Titles 12 and 31, USC) reasonably related to the Secretary's statutory duty to maintain the parity of all forms of money issued or coined by the United States, with the dollar of gold 9/10ths fine of the weight determined under the provisions of 31 USC 821?

3. Did the Second Amended Complaint fail to state a claim or cause of action upon which relief can be granted?

4. Is the action in fact one against the United States?

5. Is the Secretary of the Treasury an indispensable party?

(Four and Five need not be reached if the court finds, as the District Court did, that the complaint fails to state a claim or cause of action upon which relief can be granted.)

STATUTES INVOLVED

12 USC § 213—

"Ratification of acts of President and Secretary of Treasury

"All actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made, or

issued by the President of the United States or the Secretary of the Treasury, under sections 51a-51d, 95, 95a, 95b, 210-211, 212, 248, 347b-347d, and 445 of this title, or under sections 821 or 823 of Title 31, or under section 5, Appendix of Title 50, are hereby approved, ratified, and confirmed. Jan. 30, 1934, c. 6, § 13, 48 Stat. 343."

12 USC § 413—

"Reserves against deposits and notes

"Every Federal Reserve bank shall maintain reserves in gold certificates of not less than 25 per centum against its deposits and reserves in gold certificates of not less than 25 per centum against its Federal Reserve notes in actual circulation: *Provided, however,* That when the Federal Reserve agent holds gold certificates as collateral for Federal Reserve notes issued to the bank such gold certificates shall be counted as part of the reserve which such bank is required to maintain against its Federal Reserve notes in actual circulation. Notes so paid out shall bear upon their faces a distinctive letter and serial number which shall be assigned by the Board of Governors of the Federal Reserve System to each Federal reserve bank. Notes presented for redemption at the Treasury of the United States shall be paid out of the redemption fund and returned to the Federal Reserve banks through which they were originally issued, and thereupon such Federal Reserve bank shall, upon demand of the Secretary of the Treasury, reimburse such redemption fund in lawful money or, if such Federal Reserve notes have been redeemed by the Treasurer in gold certificates, then such funds shall be reimbursed to the extent deemed necessary by the Secretary of the Treasury in gold certificates, and such Federal Reserve bank shall, so long as any of its Federal Reserve notes remain outstanding, maintain with the Treasurer in gold certificates an amount sufficient in the judgment of the Secretary

to provide for all redemptions to be made by the Treasurer. Federal Reserve notes received by the Treasurer otherwise than for redemption may be exchanged for gold certificates out of the redemption fund provided in sections 414 and 415 of this title and returned to the Reserve bank through which they were originally issued, or they may be returned to such bank for the credit of the United States. Federal reserve notes unfit for circulation shall be returned by the Federal reserve agents to the Comptroller of the Currency for cancellation and destruction. As amended June 12, 1945, c. 186, § 1(a), 59 Stat. 237; July 19, 1954, c. 547, 68 Stat. 495."

12 USC § 462—

"*Balance which member banks must keep in reserve banks*

"Every bank, banking association, or trust company which is or which becomes a member of any Federal reserve bank shall establish and maintain reserve balances with its Federal reserve bank as follows:

"(a) If not in a reserve or central reserve city, as now or hereafter defined, it shall hold and maintain with the Federal reserve bank of its district an actual net balance equal to not less than 7 per centum of the aggregate amount of its demand deposits and 3 per centum of its time deposits.

"(b) If in a reserve city, as now or hereafter defined, it shall hold and maintain with the Federal reserve bank of its district an actual net balance equal to not less than 10 per centum of the aggregate amount of its demand deposits and 3 per centum of its time deposits: *Provided, however,* That if located in the outlying districts of a reserve city or in territory added to such city by the extension of its corporate charter, it may, upon the affirmative vote of five members of the Board of

Governors of the Federal Reserve System, hold and maintain the reserve balances specified in paragraph (a) hereof.

"(c) If in a central reserve city, as now or hereafter defined, it shall hold and maintain with the Federal reserve bank of its district an actual net balance equal to not less than 13 per centum of the aggregate amount of its demand deposits and 3 per centum of its time deposits; *Provided, however,* That if located in the outlying district of a central reserve city or in territory added to such city by the extension of its corporate charter, it may, upon the affirmative vote of five members of the Board of Governors of the Federal Reserve System, hold and maintain the reserve balances specified in paragraphs (a) or (b) thereof. Dec. 23, 1913, c. 6, § 19, 38 Stat. 270; Aug. 15, 1914, c. 252, 38 Stat. 691; June 21, 1917, c. 32, § 10, 40 Stat. 239; Sept. 26, 1918, c. 177, § 4, 40 Stat. 970; Aug. 23, 1935, c. 614, § 203(a), 49 Stat. 704."

22 USC § 286—

"Acceptance of membership by United States in International Monetary Fund

"The President is authorized to accept membership for the United States in the International Monetary Fund (hereinafter referred to as the 'Fund'), and in the International Bank for Reconstruction and Development (hereinafter referred to as the 'Bank'), provided for by the Articles of Agreement of the Fund and the Articles of Agreement of the Bank as set forth in the Final Act of the United Nations Monetary and Financial Conference dated July 22, 1944, and deposited in the archives of the Department of State. July 31, 1945, c. 339, § 2, 59 Stat. 512."

(NOTE: Detailed provisions in subdivisions 286a—m not reproduced herein.)

31 USC § 314—

"Standard unit of value

"The dollar of gold nine-tenths fine consisting of the weight determined under the provisions of section 821 of this title shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity. R.S. § 3511; Mar. 14, 1900, c. 41, § 1, 31 Stat. 45; May 12, 1933, c. 25, Title III, § 43, 48 Stat. 51; June 5, 1933, c. 48, § 2, 48 Stat. 113; Jan. 30, 1934, c. 6, § 12, 48 Stat. 342; Aug. 23, 1935, c. 614, § 203(a), 49 Stat. 704; Jan. 23, 1937, 2 p.m., c. 5, § 2, 50 Stat. 4; July 6, 1939, c. 260, § 3, 53 Stat. 998."

31 USC § 442—

"Regulations for the acquisition and use of gold; exemption of gold held beyond continental United States

"The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and (c) for such other purposes as in his judgment are not inconsistent with the purposes of sections 315b, 405b, 408a, 408b, 440-446, 752, 754a, 754b, 767, 821, 822a, 822b, and 824 of this title and sections 213, 411-415, 417, and 467 of Title 12. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from

the provisions of this section, in whole or in part, gold situated in places beyond the limits of the continental United States. Jan. 30, 1934, c. 6, § 3, 48 Stat. 340, 1946 Proc. No. 2695, 11 F.R. 7517, 60 Stat. 1352."

31 USC § 462—

"Coins and currencies

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight. May 12, 1933, c. 25, Title III, § 43(b)(1), 48 Stat. 52; June 5, 1933, c. 48, § 2, 48 Stat. 113."

31 USC § 463—

"Provision for payment of obligations in gold prohibited; uniformity in value of coins and currencies

"(a) Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States,

is repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

"(b) As used in this section, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations. June 5, 1933, c. 48, § 1, 48 Stat. 113."

31 USC § 821—

"Purchase of Treasury bills and other obligations of United States; issuance of United States notes to repay money borrowed and purchase Government bonds; legal tender; retirement of notes; regulation of value of gold and silver coins

"Whenever the President finds, upon investigation, that (1) the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currency of any other government or governments in relation to the present standard value of gold, or (2) action under this section is necessary in order to regulate and maintain the parity of currency issues of the United States, or (3) an economic emergency requires an expansion of credit, or (4) an expansion of credit is necessary to secure by international agreement a stabilization at proper levels of the currencies of various governments, the President is authorized, in his discretion—

"(a) To direct the Secretary of the Treasury to enter into agreements with the several Federal Reserve banks and with the Board of Governors of the Federal Reserve System whereby the Board of Governors of the Federal Reserve System will, and it is authorized to, notwithstanding any provisions of law or rules and regulations to the contrary,

permit such reserve banks to agree that they will, (1) conduct, pursuant to existing law, throughout specified periods, open market operations in obligations of the United States Government or corporations in which the United States is the majority stockholder, and (2) purchase directly and hold in portfolio for an agreed period or periods of time Treasury bills or other obligations of the United States Government in an aggregate sum of $3,000,000,000 in addition to those they may then hold, unless prior to the termination of such period or periods the Secretary shall consent to their sale. No suspension of reserve requirements of the Federal Reserve banks, under the terms of section 248(c) of Title 12, necessitated by reason of operations under this section, shall require the imposition of the graduated tax upon any deficiency in reserves as provided in said section 248(c). Nor shall it require any automatic increase in the rates of interest or discount charged by any Federal Reserve bank, as otherwise specified in that section. The Board of Governors of the Federal Reserve System, with the approval of the Secretary of the Treasury, may require the Federal Reserve banks to take such action as may be necessary, in the judgment of the Board and of the Secretary of the Treasury, to prevent undue credit expansion.

"(b) If the Secretary, when directed by the President, is unable to secure the assent of the several Federal Reserve banks and the Board of Governors of the Federal Reserve System to the agreements authorized in this section, or if operations under the above provisions prove to be inadequate to meet the purposes of this section, or if for any other reason additional measures are required in the judgment of the President to meet such purposes, then the President is authorized—

"(1) Repealed. June 12, 1945, c. 186, § 4, 59 Stat. 238.

"(2) Expired.

"The President, in addition to the authority to provide for the unlimited coinage of silver at the ratio so fixed, under such terms and conditions as he may prescribe, is further authorized to cause to be issued and delivered to the tenderer of silver for coinage, silver certificates in lieu of the standard silver dollars to which the tenderer would be entitled and in an amount in dollars equal to the number of coined standard silver dollars that the tenderer of such silver for coinage would receive in standard silver dollars.

"The President is further authorized to issue silver certificates in such denominations as he may prescribe against any silver bullion, silver, or standard silver dollars in the Treasury not then held for redemption of any outstanding silver certificates, and to coin standard silver dollars or subsidiary currency for the redemption of such silver certificates.

"The President is authorized, in his discretion, to prescribe different terms and conditions and to make different charges, or to collect different seigniorage, for the coinage of silver of foreign production than for the coinage of silver produced in the United States or its dependencies. The silver certificates herein referred to shall be issued, delivered, and circulated substantially in conformity with the law now governing existing silver certificates, except as may herein be expressly provided to the contrary, and shall have and possess all of the privileges and the legal tender characteristics of existing silver certificates now in the Treasury of the United States, or in circulation.

"The President is authorized, in addition to other powers, to reduce the weight of the standard silver dollar in the same percentage that he reduces the weight of the gold dollar.

"The President is further authorized to reduce and fix the weight of subsidiary coins so as to

maintain the parity of such coins with the standard silver dollar and with the gold dollar. May 12, 1933, c. 25, Title III, § 43, 48 Stat. 51; June 5, 1933, c. 48, § 2, 48 Stat. 113; Jan. 30, 1934, c. 6, § 12, 48 Stat. 342; Aug. 23, 1935, c. 614, § 203(a), 49 Stat. 704; Jan. 23, 1937, 2 p.m., c. 5, § 2, 50 Stat. 4; July 6, 1939, c. 260, § 3, 53 Stat. 998; June 12, 1945, c. 186, § 4, 59 Stat. 238."

31 USC 822a—

"Stabilization of exchange value of dollar; stabilization fund; payment of subscription to International Monetary Fund; repayment covered into Treasury

"(a) For the purpose of stabilizing the exchange value of the dollar, the Secretary of the Treasury, with the approval of the President, directly or through such agencies as he may designate, is authorized, for the account of the fund established in this section, to deal in gold and foreign exchange and such other instruments of credit and securities as he may deem necessary to carry out the purpose of this section. An annual audit of such fund shall be made and a report thereof submitted to the President and to the Congress.

"(b) To enable the Secretary of the Treasury to carry out the provisions of this section there is appropriated, out of the receipts which are directed to be covered into the Treasury under section 408b of this title, the sum of $2,000,000,000, which sum when available shall be deposited with the Treasurer of the United States in a stabilization fund (hereinafter called the 'fund') under the exclusive control of the Secretary of the Treasury, with the approval of the President, whose decisions shall be final and not be subject to review by any other officer of the United States. The fund shall be available for expenditure, under the direction of the Secretary of the Treasury and in his discretion, for any purpose in connection with carrying out the provisions of this section, including the

investment and reinvestment in direct obligations of the United States of any portions of the fund which the Secretary of the Treasury, with the approval of the President, may from time to time determine are not currently required for stabilizing the exchange value of the dollar. Such fund shall not be used in any manner whereby direct control and custody thereof pass from the President and the Secretary of the Treasury. The proceeds of all sales and investments and all earnings and interest accruing under the operations of this section shall be paid into the fund and shall be available for the purposes of the fund.

"(c) The Secretary of the Treasury is directed to use $1,800,000,000 of the fund established in this section to pay part of the subscription of the United States to the International Monetary Fund; and any repayment thereof shall be covered into the Treasury as a miscellaneous receipt. Jan. 30, 1934, c. 6, § 10, 48 Stat. 341; Jan. 23, 1937, 2 p.m., c. 5, § 1, 50 Stat. 4; July 6, 1939, c. 260, §§ 1, 2, 53 Stat. 998; June 30, 1941, c. 265, § 1, 55 Stat. 395; Apr. 29, 1943, c. 76, §§ 1, 2, 57 Stat. 68; July 31, 1945, c. 339, § 7(a), 59 Stat. 514."

STATEMENT OF THE CASE

Appellant has brought this action challenging the authority of the Secretary of the Treasury to exercise authority delegated to him *inter alia* by the President pursuant to § 3 of the Gold Reserve Act of 1934 (31 USC 442), and seeking declaratory relief and an injunction to restrain the appellee, a Treasury Agent resident in Oregon, from enforcing the regulations which regulate the unlicensed melting-down and dealing in mined gold.

This case was brought subsequent to the decision of this court adverse to appellant herein, styled *Gladys Laycock v. United States of America,* (1956), 230 F.2d 848, cert. den. (1956), 351 U.S. 964, in which plaintiff sought damages under the Tucker Act (28 USC 1346 (a)(2)), contending that the government action under the gold program amounts to a "taking" of appellant's property for which "just compensation" is due under the Fifth Amendment.

Appellant in this appeal seems basically to contend that the constitutional power of Congress to "coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures" (Art. I, § 8, Const.) does not extend to regulating the value of currency or to the governmental management of media of exchange other than coined money, that the plaintiff has a right to mine her gold and dispose of it at a profit, which she claims to be unable to do for $35 per troy ounce, and that to deprive her of such a claimed right amounts to a "taking" within the protection of the Fifth Amendment; that the "irredeemable currency which the government offers in exchange for the plaintiff's gold does not and cannot constitute just compensation"; and that no department of the government has any power to set the price of the metal gold.

From the opinion below, dismissing the complaint, appellant appeals. Appellee contends that the dismissal of the complaint was proper, and asserts that such dismissal was proper on the ground stated by the District Court and additional grounds not ruled upon, as outlined in the Jurisdictional Statement, *supra.*

ARGUMENT

Introduction

Appellee, an agent of the U. S. Secret Service, is charged with enforcing in his territory Gold Regulations issued by the Secretary of the Treasury under § 3 of the Gold Reserve Act of 1934 (31 USC 442). These Regulations impose no restrictions on transactions in gold in its natural state or newly-mined gold which has not been melted, smelted, or treated or refined (31 CFR 54.19). Further, the Regulations do not require appellant to sell her gold to the government at a fixed price or at any price. She may sell her ore without restriction to any purchaser in the United States. If she chooses to have her ore refined, melted, treated, etc., she is permitted by the Regulations to sell it to persons authorized by a Treasury gold license or by a general provision in the Regulations authorizing users of small amounts of gold to acquire gold for use in industry, profession, or art. She may, if she chooses, sell such gold to the U. S. Mint at a price set forth in the Gold Regulations, $35 per fine troy ounce, less the handling charges (3 CFR 54.36, 54.44), but to repeat, she is not required to do this. Appellee, in carrying out his duties, is charged with enforcing the provisions of the Regulations requiring a license to melt and treat gold and prohibiting sales of melted and treated gold to unauthorized persons.

Appellee submits that the Gold Regulations challenged are reasonable administrative regulations in furtherance of the lawful exercise by Congress of the

constitutional enablement to Congress to regulate the value of money. It is submitted that the following material supports this proposition. If the court should come to a different conclusion than the Secretary of the Treasury, that is not enough, we submit, to disturb the administrative regulations, unless the court should also find that the regulations are arbitrary, capricious or unreasonable. Certainly, the following discussion demonstrates that there is a rational and reasonable basis for the regulations in support of a Congressional authorization and policy which they are designed to further in effecting the regulation of money.

The price which appellant may realize for her gold results, in substance, from the Treasury's operations in buying and selling gold domestically in all authorized transactions and, internationally, in the settlement of international balances, all at the official price of $35 per fine troy ounce. These transactions are carried out pursuant to authority granted by Congress in §§ 8, 9 and 10 of the Gold Reserve Act of 1934 (31 USC 733, 734, 822a), pursuant to international agreement, and in accordance with the policies expressed by Congress in the Act of March 14, 1900, as amended (31 USC 314) and in the Bretton Woods Agreements Act (22 USC 286). The $35 price is the equivalent of the weight of the gold dollar, 15 and 5/21 grains of gold 9/10ths fine, as defined by Proclamation No. 2072, Jan. 31, 1934 (48 Stat. 1730). By law, the gold dollar, as so defined, is the standard unit of value in the United States (31 USC 314). A par value for the dollar of 15-5/21 grains of gold 9/10ths fine was communicated by the

United States to the International Monetary Fund. Under § 5 of the Bretton Woods Agreements Act, this par value may not be changed without the consent of Congress. The Articles of Agreement of the International Monetary Fund (60 Stat. 1401) provide in Article IV, § 2, that members may not buy gold at a price above par value plus a prescribed margin (now 1%) or sell gold at a price below par value minus the prescribed margin.

Thus, it cannot be said that appellee, in enforcing the Gold Regulations, is requiring appellant to sell her gold to the government at a fixed price. Under the regulations, gold need not be sold to the government, and if it is sold privately there is no provision in the regulations prescribing the price that may be realized.

I. Historical Background—
United States Monetary Standard.

Congress established the first monetary system of the United States under the Constitution in the Coinage Act of April 2, 1792 (1 Stat. 246 et seq.). That Act provided for the free and unlimited coinage of both gold and silver at a ratio of 15-1 (1 Stat. 248, 249). The gold coins authorized were the eagle, having a value of ten dollars and a gold content of 247-4/8 grains of pure gold, and smaller coins having proportionate amounts of gold. A dollar or unit containing 371-4/16 grains of pure silver was also provided for in this Act. Both gold and silver coins were legal tender. The monetary system which this Act instituted is commonly

defined by authorities on money as one of bimetallism, i.e., simultaneous maintenance of a gold and silver standard. Chandler, *Economics of Money and Banking,* Rev. Ed., Harper Bros., N.Y. 1953, pp. 103, 108; Prather, *Money and Banking,* 6th Ed., Irwin, Inc., Homewood, Ill., 1957, p. 129.

The Act of February 12, 1873 (R.S. 3511) made the gold dollar, consisting of 25.8 grains of gold 0.900 fine, the standard unit of value in the United States. Provision for silver dollars was omitted from the 1873 Act, with the exception of trade dollars having a larger silver content than the former silver dollar and intended for use for trading purposes in the Orient (R.S. 3513).

The coinage of silver dollars was again authorized by the Bland-Allison Act of February 28, 1878 (20 Stat. 25). However, no change was made in the provisions of the 1873 Act establishing the gold dollar as the standard unit of value in the United States and this policy was reaffirmed by the Gold Standard Act of March 14, 1900 (31 Stat. 45), which further provided that "all forms of money issued or coined by the United States shall be maintained at parity of value with this standard and it shall be the duty of the Secretary of the Treasury to maintain such parity."

The mint institutions have always received deposits of any gold suitable for mint operations (with certain minimum quantity limitations) including newly-mined domestic gold, for coinage and return to the depositor. (Act of April 2, 1792, 1 Stat. 246). In 1852 provision was made for the conversion of gold in the form of

lumps or grains into fine bars for return to the depositor, at his expense. This provision was extended to all types of gold and to silver by the Act of February 21, 1853 (10 Stat. 160), which also provided that the subsidiary silver coins established by that Act might be exchanged at face value for gold coins.

The Acts of March 3, 1863 (12 Stat. 770, 771) and June 8, 1878 (20 Stat. 102) authorized the issuance of gold certificates in exchange for gold bullion. The exchange by the mints of gold bullion for gold coins, in amounts of $5,000 was authorized by the Act of May 26, 1882 (22 Stat. 97).

Immediately prior to the passage of the gold legislation and the issuance of the orders of 1933 and 1934, therefore, any form of gold, suitable for mint operations and with certain quantity limitations, was received at the mint and in return the depositor was given gold coins, gold bullion, gold certificates, or if he so desired a check on the Treasurer, which could be cashed in gold coin or certificates, in return for his gold. Anyone could also obtain from a mint gold bullion, in quantity, in exchange for either gold coin or gold certificates.

The Secretary of the Treasury has had authority to sell gold since the Joint Resolution of March 17, 1864 (13 Stat. 404). The provision of § 9 of the Gold Reserve Act authorizing the Secretary of the Treasury to sell gold is substantially a continuation, with some enlargement, of that authority.

Not only were the mints authorized by law to carry out transactions in newly-mined gold during the period

before 1933, but it appears that they did actually engage in a large volume of such transactions. The following table taken from the Annual Report of the Director of the Mint for 1930 (pp. 38 and 66) shows estimated domestic gold production and deposits at the mints of gold from domestic sources for representative years between 1873 and 1930:

Calendar years	Domestic gold production	Domestic deposits including refinery product from foreign ores
1873-1875	$102,958,800	$ 92,871,083
1901-1905	400,903,800	473,430,015
1925	49,860,200	78,677,633
1926	48,269,600	72,415,516
1927	45,418,600	72,580,338
1928	46,165,400	68,669,228
1929	45,651,400	66,980,739

With respect to issues of gold by the Treasury for use in industry, the Annual Report of the Director of the Mint for 1930 said (at page 38):

> "Among the purveyors of gold and silver for use in the industrial arts of the United States, the United States assay office at New York and the mint at Philadelphia hold the foremost places; consequently the material consumed in the arts is brought under Government notice and is a matter of public record."

To the same effect, also see Annual Reports of 1915, p. 248; 1921, p. 61; 1926, p. 35; 1927, p. 34; 1928, p. 40; and 1929, p. 38.

The following table from pages 39 and 131 of the Annual Report of the Director of the Mint for 1930 gives the amounts so furnished by the mints during

representative years between 1914 and 1928 together with the totals of such gold issued from all sources during these years:

Calendar Year	Issued by Mints (millions)	Total Issued (millions)
1915	$31.9	$36.1
1920	71.4	79.7
1925	56.2	61.2
1926	56.5	63.0
1927	51.6	56.8
1928	50.1	56.6

These figures were submitted to the District Court unchallenged by appellant. Thus, prior to 1933, the mints dealt in newly-mined gold and issued gold which was used in industry and the arts. Although no regulations were imposed on private trading in gold or melting and treating it during this period, the mints were, in fact, the main sources in the United States of gold used in industry, profession or art. The reasons for this and the reasons why a market for gold with a fluctuating price or one which differs from the official mint price does not develop under a gold coin standard such as the United States maintained before 1933 were explained by Frederick A. Bradford, Professor of Economics, Lehigh University, in *Money and Banking,* 4th ed., Longmans Green & Co., New York, 1937, pp. 23-24:

> "To maintain a gold coin standard the government must accept gold freely at the mint for coinage in unlimited quantities, the gold coins being returned to the parties who have brought the gold to the mint. Since the amount of gold contained in a coin of a given denomination is fixed by law, the free coinage of gold by the mint sets a lower limit on the price of gold as no one would sell gold

in the market for less than the amount of gold coins which could be obtained at the mint." (p. 23)

* * * *

"The second requirement of the gold coin standard is that there shall be no restriction on the melting of gold coin for non-monetary uses or for export to foreign countries. If this requirement is adhered to, the upper and lower limits of the price of gold will be identical and the price of the metal will then be absolutely fixed. The reason for this is that no one will give more for gold than can be obtained by melting gold coin. To refer to the previous illustration, if $20 in gold coin can be turned into an ounce of gold bullion by melting, naturally no one will be inclined to give more than $20 per ounce for gold in the market. There may be a slight discrepancy since the melting of the coin contains an element of expense, but it will not be great." (p. 24)

The late Edwin Walter Kemmerer, Professor Emeritus of Economics, Princeton University, made the same observations with respect to the operation of the gold coin standard in the United States prior to 1933,* *Gold and the Gold Standard,* McGraw Hill, New York, 1944, p. 103:

"The unit of value, as we have seen, was the gold dollar containing 23.22 grains of pure gold. Inasmuch as there are 480 grains of gold in an ounce, an ounce of gold could be coined into $20.67 of United States gold coin. Since we had free coinage of gold, anyone could take pure gold bul-

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* During the period before 1933, convertibility of the currency into gold was in effect in the United States except for suspensions during periods of serious wars, namely, the Civil War and World War I. (Chandler, *The Economics of Money and Banking,* pp. 108-128; Kemmerer, *Gold and the Gold Standard,* pp. 83, 86, 108).

> lion in any quantity to an American mint and have it minted into gold coin, receiving for each ounce $20.67 (less certain petty charges for assaying, refining, partage, etc.), while anyone melting down American gold coins of full weight could get an ounce of pure gold out of every $20.67 worth of gold coin melted. Thus in the United States at that time, to say that an ounce of gold was worth $20.67 was like saying that a foot was 12 inches long; $20.67 was, in reality, an ounce of pure gold put up in the form of money."

Internal redemption of the currency into gold was terminated and restrictions were placed on private transactions in gold by several measures taken in 1933 and 1934 culminating in the Gold Reserve Act of 1934 (31 USC 440). By several Executive Orders (6102, April 5, 1933; 6111, April 20, 1933; 6260, August 28, 1933) issued under the authority of the Act of March 9, 1933 (48 Stat. 1), the hoarding of gold was prohibited and gold coin, gold bullion, and gold certificates were required to be delivered to the United States for redemption at face amount or on the basis of $20.67 per fine troy ounce of gold. The Secretary of the Treasury was empowered to issue regulations and licenses for the acquisition, holding, etc. of gold. An Order of the Secretary of the Treasury, issued on December 28, 1933 pursuant to § 2 of the Act of March 9, 1933, also required the delivery to the United States of gold coin, gold bullion, and gold certificates.

For a brief period a government handling program for newly-mined domestic gold was in effect. Executive Order 6261, August 29, 1933, authorized the Secretary of the Treasury to receive such gold on consignment for

export or for sale to persons licensed to acquire gold for use in industry. Sales were to be made at a price equal to that obtainable in the free gold markets of the world. Such treatment for newly-mined gold was continued by Executive Order No. 6359, October 25, 1933. However, those provisions applied only to newly-mined gold from domestic sources which had been melted or treated subsequently to August 28, 1933. Newly-mined gold so produced before that date was required to be delivered to the government for payment at the rate of $20.67 per fine troy ounce. *Alaska Juneau Gold Mining Co. v. U. S.* (1941), 94 Ct. Cls. 15. The following excerpt from the President's Radio Message of October 22, 1933, quoted in Bradford, *Money and Banking,* pp. 83-84, shows that the theory of this program very definitely assumed that the price of newly-mined gold affected the value of money:

> "Because of conditions in this country and because of events beyond our control in other parts of the world, it becomes increasingly important to develop and apply further measures which may be necessary from time to time to control the gold value of our own dollar at home.
>
> "Our dollar is now altogether too greatly influenced by the accidents of international trade, by the internal policies of other nations and by political disturbance in other continents.
>
> "Therefore the United States must take firmly in its own hands the control of the gold value of our dollar. This is necessary in order to prevent dollar disturbances from swinging us away from our ultimate goal, namely, the continued recovery of our commodity prices.
>
> "As a further effective means to this end, I am going to establish a government market for gold in

> the United States. Therefore, under the clearly defined authority of existing law, I am authorizing the Reconstruction Finance Corporation to buy gold newly-mined in the United States at prices to be determined from time to time after consultation with the Secretary of the Treasury and the President. Whenever necessary to the end in view, we shall also buy or sell gold in the world market.
>
> "My aim in taking this step is to establish and maintain continuous control.
>
> "This is a policy and not an expedient.
>
> "It is not to be used merely to offset a temporary fall in prices. We are thus continuing to move toward a managed currency . . ." (pp. 83, 84).

Bradford, at page 83, described this program as precedent to the later devaluation of the traditional dollar unit.

With the enactment of the Gold Reserve Act of January 30, 1934, the issuance of the Provisional Regulations, and the President's Proclamation of January 31, 1934, devaluing the dollar (48 Stat. 1730), a new mint price for gold was established except in relation to gold bullion and gold coins which had been required to be delivered under the 1933 Orders. [The Instructions of the Secretary of the Treasury of January 17, 1934 continued in effect the $20.67 price for such gold. The policy of having a special arrangement for the disposition of newly-mined gold was then terminated. (Annual Report of the Secretary of the Treasury, 1934, pp. 119, 120, 204, 205.)] Lester V. Chandler, Professor of Economics, Princeton University, in *The Economics of Money and Banking,* cited above, described at pages 156-158, the changes effected in the monetary system by the Gold Reserve Act of 1934:

"From early March, 1933, until the end of January, 1934, the United States was unquestionably off the gold standard. Not only did the government refuse to redeem its money in gold either for domestic holding or for export, but it required the turning in of virtually all gold coin, gold bullion, and gold certificates *except* rare coins and 'reasonable amounts' for industrial or artistic uses. The country returned to gold on January 30, 1934, but the new gold standard differed greatly from that prevailing before March, 1933. The principal provisions of the Gold Reserve Act of 1934 were as follows:

"1. The President was authorized to fix the gold value of the dollar, with the limitation that it might not be fixed at less than 50 percent or more than 60 percent of the old amount. Thus, the President at his discretion could define the dollar as not more than 13.93 grains and not less than 11.61 grains; the price of gold could not be set below $34.45 (the level reached by January under the gold-buying program) or above $41.34 an ounce.

Acting under this power, the President on January 31, 1934, fixed the price of gold at $35 an ounce, though he expressly reserved the right to alter the price as the country's interest might require.* Actually, however, the price has remained unchanged at this level. The gold content of the new dollar is 13.71 grains, representing a reduction of 40.94 percent. . . .

"2. All gold was 'nationalized.' Banks and individuals had already been required to turn in all gold and gold certificates, except for certain permitted amounts of gold, to the government or the Federal Reserve banks.

"The law provides that title to gold in the Federal Reserve banks shall be vested in the government and that any profits or losses accru-

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* The President's power to further alter the gold content of the dollar expired on June 30, 1945 (57 Stat. 68).

ing from increases or decreases in the price of gold shall be for government account. The Federal Reserve may, however, hold gold certificates. No currency of the United States is to be redeemed in gold, except that gold certificates held by the Federal Reserve banks may be redeemed in gold to the extent that the Secretary of the Treasury judges necessary.

"3. No more gold is to be coined (unless for foreign use) and existing coins are to be formed into bars.

"4. No one may hold, transport, import, export, or otherwise deal in gold except under regulations to be prescribed by the Secretary of the Treasury with the approval of the President." (pp. 156, 157)

The Provisional Regulations issued on January 31, 1934 under the Gold Reserve Act of 1934 appear at page 67 of the Hearings before the Senate Committee on Banking and Currency, Seventy-third Congress, Second Session, on S. 2366 (Gold Reserve Act) and thus were before Congress when the Gold Reserve Act was passed. These regulations established a system for the regulation of gold in the United States which, with only minor alterations, has been continuously in effect until the present day. § 12 of such regulations contained an absolute prohibition on all dealing in gold except as expressly authorized in the regulations or licenses issued hereunder. § 19 permitted the acquisition and possession of gold in its natural state without a license. However, the melting or treating of such gold required a license. The provisions governing purchases of gold by the mints were also similar to those in the Gold Regulations now in effect. Under §§ 38 and 42, the mints were author-

ized to purchase gold recovered from natural deposits in the United States or places subject to its jurisdiction at the price of $35 per fine troy ounce, less ¼ of 1% handling charge. Under §§ 43 and 44 of the Regulations the mints were authorized to sell gold to persons licensed to acquire gold for use in industry, profession or art at the price of $35 per fine troy ounce, plus the handling charge. As pointed out in the above quotation from Chandler, *The Economics of Money and Banking,* this $35 price is the equivalent of the gold content of the dollar announced in the Presidential Proclamation of January 31, 1934, i.e., 15-5/21 grains of gold 9/10ths fine or 13.71 grains of pure gold. The gold dollar as defined in this Presidential Proclamation is the standard unit of value in the United States today (31 USC 314). The Federal Reserve banks are required by statute to maintain reserves of 25 per cent in gold certificates (issued against gold at its statutory value of $35 per fine troy ounce) against their deposits and notes in actual circulation (12 USC 413).

II. The Regulation of Newly-Mined Gold in the United States Is Authorized by §§ 3 and 4 of the Gold Reserve Act of 1934.

Appellee is responsible for enforcing in his territory, Regulations issued by the Secretary of the Treasury under § 3 of the Gold Reserve Act of 1934 (31 USC 442). This section provides in part:

> "The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted

> or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks and for the purpose of settling international balances; and, (c) for such other purposes as in his judgment are not inconsistent with the purposes of [this Act.] Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations."*

§ 4 of the Gold Reserve Act provides for forfeiture of any gold withheld, acquired, transported, melted or treated, etc., in violation of any Regulations issued pursuant to the Act and, in addition, a penalty equal to twice the value of any gold with respect to which any such violation as occurred may be imposed upon any person failing to comply with the Act or Regulations or licenses issued thereunder.

It is the contention of the appellant that these provisions do not apply to newly-mined gold or gold produced after the date of the Gold Reserve Act (Appellant's Op. Br., p. 55), that the legislative history of the Act and its expressed purposes—"to provide for the better use of the monetary gold stock of the United States . . . ," show congressional purpose to exclude from the scope of the prescribed regulations newly-mined gold produced in the United States or any gold not in

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* The President's authority, with respect to the approval of Regulations issued under § 3, was delegated to the Secretary of the Treasury in § 2(b) of E.O. No. 10289, Sept. 17, 1951 (16 FR 9501).

existence on the date of passage of the Gold Reserve Act of 1934.

This contention cannot be supported. A reading of the Act and its stated purposes as well as its legislative history, both at the time of enactment and subsequently, shows that Congress intended that it would apply to newly-mined gold as fully as to other gold. In the first place, §§ 3 and 4 of the Act apply to "gold" and "gold in any form"; there is no exception for newly-mined gold. Where possible, words in a statute are to be construed in their ordinary, everyday sense. *Browndér v. U. S.* (1940), 312 U.S. 335; *Crane v. Commr. of Int. Rev.* (1947), 331 U.S. 1. It cannot be successfully contended that the ordinary, everyday definition of "gold" and "gold in any form" does not include newly-mined gold from sources in the United States.

The history of the Gold Reserve Act indicates congressional purpose that "gold" and "gold in any form" include newly-mined gold produced subsequent to the date of the Act. As pointed out above, the then proposed regulations which expressly applied to newly-mined gold in the same manner as the present Gold Regulations, were placed in the record at the Hearings of the Senate Committee on Banking and Currency on the Gold Reserve Act and thus were before Congress at the time of enactment of the bill.

More broadly, it must not be forgotten that a major economic problem facing the country with which the Gold Reserve Act was intended to help deal was a large and rapid increase in the purchasing power of the dollar

or, stated otherwise, the decline in the price level. Chandler, in *The Economics of Money and Banking*, pp. 147-149, describes the period as "one of devastating deflation and widespread economic distress. By early 1933 the nation's money supply had fallen nearly 25% below 1929 levels; . . . the national income had fallen by more than 50% in terms of money and more than 25% in real terms; wholesale prices had fallen more than 30%; upward of 15 million persons were wholly unemployed or working only part time; . . .". With respect to the relation of the dollar and foreign currencies, Chandler states that by February 1933 foreign currencies had fallen drastically in value relative to both gold and the dollar and that this decline in the price of foreign money tended to accentuate deflation here. The over-valuation of the dollar in the exchange market was a significant factor in depressing the prices of our export goods which had to compete with the products of countries with depreciated currencies. It also tended to reduce the prices of American products that competed with imports.

Chandler further states (p. 148) that the objectives of our monetary policy in 1933, as defined by the President, were two-fold—an increase in the price level and, after restoration of a fairer price level, the stabilization of the purchasing power of money.

The express purpose of the Gold Reserve Act was not only to provide for a better use of the gold stock but to protect the currency system of the United States. The first purpose could be achieved in part by calling

in from the banks and from private individuals the monetary gold then outstanding and centralizing it under control of the Treasury. However, as is evident from the legislative history of the Act, to fully achieve both of the expressed purposes required a program having future operation which would not only protect and increase the centralized gold reserves but would assure their constant value in terms of the dollar and, conversely, would assure a stable value of the dollar in terms of gold. The President's message to Congress of January 15, 1934 (Hearings before the Senate Committee on Banking and Currency on S. 2366, 73rd Cong., 2d Sess., p. 6) stated the following concerning the relationship between gold and currency:

> "To the Congress:
>
> "In conformity with the progress we are making in restoring a fairer price level and with our purpose of arriving eventually at a less variable purchasing power for the dollar, I ask the Congress for certain additional legislation to improve our financial and monetary system. By making clear that we are establishing permanent metallic reserves in the possession and ownership of the Federal Government, we can organize a currency system which will be both sound and adequate.
>
> "The issuance and control of the medium of exchange which we call 'money' is a high prerogative of government. It has been such for many centuries. Because they are scarce, because they could readily be subdivided and transported, gold and silver have been used either for money or as a basis for forms of money which in themselves had only nominal intrinsic value.
>
> "In pure theory, of course, a government could issue mere tokens to serve as money—tokens which

would be accepted at their face value if it were certain that the amount of these tokens were permanently limited and confined to the total amount necessary for the daily cash needs of the community. Because this assurance could not always or sufficiently be given, governments have found that reserves or bases of gold and silver behind their paper or token currency added stability to their financial systems."

The Committee on Coinage, Weights and Measures, House of Representatives, in its report on the Gold Reserve Act, stated as follows with regard to the relationship of the provisions of the bill to the ends sought to be achieved, restoration of a fairer price level, the eventual arrival at a less variable dollar, and the improvement of the financial and monetary system (House Report 292, 73d Cong., 2d Sess., p. 2):

"This bill is designed to enable the administration to restore a fairer price level, *to arrive eventually at a less variable dollar* and to improve our financial and monetary system. It gives the United States Treasury possession of all the monetary gold stock in the United States, part of which now rests in private or quasi-private control. In this way the Government gains complete control over this metal and at the same time provides a permanent metallic reserve upon which to build a currency system which will be both sound and adequate in the future. The import of this may be appraised in the realization that all authorities seem to agree that the salvation of the country lies in our ability to control our price level. All commodities are measured in gold, hence the first step in our control must be the acquisition of gold stocks. The bill, therefore, transfers to the United States all gold now held by the Federal Reserve bank and pays for it in gold certificates. These gold certificates are to be used by the Federal Reserve bank as a substi-

> tute for their present gold stocks in issuing currency. *In order to protect the Government's power over gold, the bill gives it the right to regulate the acquisition, transportation, etc., of the metal, and to further the Government's position, provisions are made for the forfeiture of gold withheld or acquired in violation of this act.* In addition the gold supply is further protected by alterations in the former method of redemption. The gold coin which was a part of the older system will now be withdrawn from circulation and melted into bars for use in adjusting the balance of foreign trade." [Emphasis supplied.]

Accordingly, it does not appear that the legislative history of the Act or its purposes indicate that there was any intention whatsoever to exclude from the scope of the Act newly-mined gold or gold coming into existence after its enactment. The cited quotations from the legislative history of the Act certainly demonstrate the Executive and congressional view that gold affects the value of money. The President's message and the report of the House Committee which considered the bill point out clearly that its purpose was to deal with a declining price level. In addition to centralizing the gold reserves, the measures authorized by the Gold Reserve Act were intended to increase the supply of money by broadening the currency and credit base. The legislative history also shows that after a fairer price level had been restored through these measures, a prime object of the monetary policy established by the Gold Reserve Act was the future maintenance of a stable dollar which was again to be a constant unit in terms of gold.

It has been shown that prior to 1933, when the

country was on a gold coin standard, the price of gold, including newly-mined gold, was maintained automatically at the gold parity of the dollar and that during this period the Treasury conducted a large volume of business both in receiving new gold production and products of domestic refineries and in furnishing gold to industry and art. Thus it cannot be argued that there ever was any tradition with respect to separate treatment of gold used in industry and gold used as money. In fact, newly-mined gold was the vehicle through which dollar devaluation was first attempted in 1933. The Gold Reserve Act instituted a new policy in that prior to its enactment the parity of the dollar and gold had been maintained through gold coinage and redemptions by the government. Under the Gold Reserve Act, such parity has been maintained through purchases and sales by the government at the official price. In order to protect the gold stocks which constitute the basis for our currency and credit from withdrawals for hoarding purposes and to prevent fluctuating prices for gold in terms of the dollar, regulations have been imposed generally limiting the possession, melting and treating, etc. of gold to persons regularly engaged in an industry, profession, or art which requires gold. It would appear that this application is entirely consistent with the expressed purposes of the Gold Reserve Act and with the purposes appearing in its legislative history.

This application of the Gold Reserve Act has been in effect through Treasury Regulations, with only minor alterations, continuously since January 31, 1934. Thus it represents an administrative interpretation of 24

years' standing and as such is entitled to great weight in the courts. *Bowles v. Wheeler,* 9 Cir. 1945, 152 F.2d 34.

Subsequent legislative history of proposals which would have amended the Gold Reserve Act to exempt newly-mined gold from its operation presents a particularly strong case in which it can be said that the administrative interpretation and application of a congressional enactment, i.e., the Gold Reserve Act of 1934, has been accepted by the Congress to be the correct one.

In *Fahey et al v. O'Melveny & Myers et al,* 9 Cir. 1952, 200 F.2d 420, the court considered a question of interpretation of the Home Loan Bank Act involving the issue of whether administrative orders of the Home Loan Board were within the purview of the Administrative Procedure Act and subject to judicial review thereunder. Weight was given by the court to the failure of Congress to amend the Home Loan Bank Act to make provision for such review under circumstances where strong and continuing efforts had been made to secure an amendment. The court said, at p. 480:

> ". . . courts should not feel free to overlook or minimize the significance of the continuing refusal of Congress to amend the Home Loan Bank Act (or its seeming indifference to demands for changes in the law) after complaints had been so thoroughly and vigorously publicized through official channels."

In *Madden v. Brotherhood & Union of Transit Employees of Baltimore,* 4 Cir. 1945, 147 F.2d 439, the court, in interpreting the National Labor Relations Act, gave weight to the failure of Congress to enact legisla-

tion amending the Act after full hearings had been held on such amendments in which an NLRB witness had opposed the proposed amendments.

Since 1946, a number of bills have been introduced into the Congress which had as their sole purpose the liberalizing of restrictions on transactions in newly-mined gold in the United States. All of these bills would have removed all restrictions on trading in such gold in the United States, melting, treating it, etc. Some, such as S. 1775 and H.R. 625, 85th Cong., 1st Sess., would have also permitted the export of such gold, would have allowed imports of newly-mined gold, and would have prohibited Treasury sales of gold for industrial use or in any free market for the purpose of depressing the price. Following is a list of such bills:

80th Congress—2nd Session	
S. 2583	94 Cong. Rec. 4927
S. 2862	" " " 8078
H.R. 5530	" " " 1657
H.R. 6366	" " " 5026
81st Congress—1st Session	
S. 13	95 Cong. Rec. 38
S. 286	" " " 109
H.R. 67	" " " 15
H.R. 387	" " " 21
H.R. 3262	" " " 1957
82nd Congress—1st Session	
S. 13	97 Cong. Rec. 86
H.R. 2864	" " " 1552
2nd Session	
H.R. 5965	98 Cong. Rec. 107
83rd Congress—1st Session	
S. 2364	99 Cong. Rec. 8580
S. 13	" " " 153

H.R. 125	" " " 55
H.R. 6156	" " " 8264
2nd Session	
S. 3222	100 Cong. Rec. 4040
H.R. 6912	" " " 20
84th Congress—1st Session	
S. 515	101 Cong. Rec. 446
H.R. 606	" " " 43
H.R. 661	" " " 44
H.R. 2454	" " " 430
2nd Session	
H.R. 9916	102 Cong. Rec. 4652
85th Congress—1st Session	
S. 325	103 Cong. Rec. 239
S. 1775	" " " 4304
H.R. 375	" " " 68
H.R. 2132	" " " 306
H.R. 625	" " " 188
H.R. 2400	" " " 412
H.R. 3800	" " " 938
H.R. 9433	" " " 14476
2nd Session	
S. 2951	104 Cong. Rec. 113

Thus, over a period of 12 years, numerous bills to remove restrictions on dealings in newly-mined gold have been pending in Congress, and to date Congress has not passed one.

Aside from the many bills introduced into Congress for establishing a free market in gold, the matter has been raised in several congressional hearings including the Hearings of the Subcommittee on Monetary, Credit and Fiscal Policies of the Joint Committee on the Economic Report, 81st Cong., 1st Sess., 1949, pp. 552-570, and "Investigation of the Financial Condition of the United States," Hearings before the Senate Finance

Committee, 85th Cong., 1st Sess., 1957, Part I, pp. 486-488, 520-522. In addition, in 1954, hearings entitled "Gold Reserve Act Amendments" were held by a Subcommittee of the Senate Committee on Banking and Currency, 83rd Congress, 2d Sess., on S. 13, S 2332, S. 2364, and S. 2514, "To permit the sale of gold, to resume the redemption of gold, to permit the free marketing of newly mined gold, to establish a sound monetary system and for other purposes." A copy of the record of these hearings was attached to a memorandum submitted by appellee to the District Court substantially identical to this discussion and is so voluminous that it was not reproduced, though designated by appellee as part of the record on appeal. Attention is invited to it as an exhibit in this cause. At the hearings all of the proposals under consideration for amending the Gold Reserve Act were opposed by witnesses from the Treasury and the Board of Governors of the Federal Reserve System (pp. 16-32, 39-41). Other witnesses, such as Delegate Bartlett (p. 90) and Senator McCarran (p. 139) testified in favor of S. 13 (p. 1) which would have instituted a free gold market. Supporters of S. 2332 (pp. 2-4), which would have restored internal redemption of the currency into gold at the present parity of gold and the dollar, included Senator Bridges (p. 10), Professor Donald L. Kemmerer (p. 293), Professor Bell (p. 94), and Dr. Harwood (p. 303). It should be noted that these witnesses opposed any type of proposal for removing restrictions on gold transactions in the United States without at the same time instituting full gold redemption to assure main-

tenance of all forms of currency at parity with gold or, stated otherwise, to assure maintenance of a $35 price for gold by the Treasury in a situation where dealings in gold would be unrestricted. Others, including Representative Young (p. 63), favored a free gold market as a step toward arriving at a new parity between gold and the dollar and instituting a redeemable gold standard based on this parity.

None of these proposed bills was enacted after these hearings nor was a report issued by the Subcommittee. Under such circumstances, it would not appear that there exists in Congress any belief that the Secretary of the Treasury is usurping power by regulating newly-mined gold under § 3 of the Gold Reserve Act in order to maintain the dollar at parity with gold.

In addition, the importance which the Congress attaches to the maintenance of the gold parity of the dollar is manifested by the fact that § 5 of the Bretton Woods Agreements Act of 1945 (22 USC 286) provides that neither the President nor any other person or agency shall propose to the International Monetary Fund any change in the par value of the dollar, approve any change in such par value, or approve any general change in par values unless Congress by law authorizes such action. The United States, as required by Article IV, § 1, of the IMF Articles of Agreement, has expressed a par value of the dollar equal to 15-5/21 grains of gold 9/10ths fine. Further, under Article IV, § 2, the United States has an obligation to the IMF not to buy gold at a price above par value plus a prescribed margin

or sell gold at a price below par value minus the prescribed margin. The IMF has 65 members.

Accordingly, there is no doubt that the Gold Reserve Act of 1934 and the delegation of authority to the Secretary of the Treasury, contained in § 3 thereof, to regulate transactions in gold, apply to gold mined from domestic sources subsequently to the date of enactment of the Gold Reserve Act as fully as to other gold.

This is clear from a reading of the Act and from its purposes and legislative history. It is also made clear by the fact that after the introduction into the past ten sessions of Congress of numerous bills to terminate the application of the Act and regulations to newly-mined domestic gold and thorough publicity given to these proposals, Congress has not, to date, passed any such amendatory legislation.

III. The Gold Regulations of the Secretary of the Treasury Bear a Reasonable Relationship to the Monetary Policy Established by Congress in the Gold Reserve Act of 1934 and to the Constitutional Authority of Congress Over Revenue, Finance and Currency.

The Supreme Court has affirmed the broad and comprehensive authority of Congress in these fields in *Knox v. Lee* (1870), 12 Wall. 457; *Julliard v. Greenman* (1884), 110 U.S. 421; *Ling Su Fan v. U.S.* (1910), 218 U.S. 302; *Norman v. B. & O. R.R. Co.* (1935), 294 U.S. 240; *Nortz v. U.S.* (1935), 294 U.S. 317; and *Perry v. U.S.* (1935), 294 U.S. 330. In *Norman v. B. & O. R.R. Co., supra,* the Supreme Court defined the limitations

on its jurisdiction to inquire into the exercise of such powers by Congress (at p. 311):

> "Despite the wide range of the discussion at the bar and the earnestness with which the arguments against the validity of the Joint Resolution have been pressed, these contentions necessarily are brought, under the dominant principles to which we have referred, to a single and narrow point. That point is whether the gold clauses do constitute an actual interference with the monetary policy of the Congress in the light of its broad power to determine that policy. Whether they may be deemed to be such an interference depends upon an appraisement of economic conditions and upon determinations of questions of fact. With respect to those conditions and determinations, the Congress is entitled to its own judgment. We may inquire whether its action is arbitrary or capricious, that is, whether it has reasonable relation to a legitimate end. If it is an appropriate means to such an end, the decisions of the Congress as to the degree of the necessity for the adoption of that means, is final."

The Supreme Court has also held on many occasions that the courts are not at liberty to disturb administrative regulations made as authorized in an act of Congress except upon a showing that such regulations are unreasonable, arbitrary, capricious, not in accordance with law, or for some other reason amounting to a lack of power. *Board of Trade of Kansas City v. U.S.* (1942), 314 U.S. 534; *National Broadcasting Co., Inc. v. U. S.* (1943), 319 U.S. 190; *Chicago, Rock Island & Pacific Railway Co. v. U. S.* (1931), 284 U.S. 80.

The Gold Regulations were issued under § 3 of the Gold Reserve Act of 1934 which provides for the issu-

ance of regulations by the Secretary of the Treasury prescribing the conditions under which gold may be acquired, etc. "(a) for industrial, professional and artistic use; (b) by the Federal Reserve Banks for the purpose of settling international balances; and (c) for such other purposes as in his judgment are not inconsistent with the purposes of this Act." The constitutionality of this provision has been upheld against the contention that it constituted an unlawful delegation of legislative power in *Uebersee Finanz Korporation, etc. v. Rosen,* 2 Cir. 1936, 83 F.2d 225, cert. den. 298 U.S. 679. With respect to the regulation by the Secretary of the Treasury of newly-mined gold under such Act, it would appear that appellant is complaining about the failure of the Secretary to exercise any discretion he might possess under (a) and (c) of § 3 to allow the free trading in and treating and melting, etc., of newly-mined gold in the United States and its export, i.e., to exempt this type of gold from the provisions of the Gold Regulations on the basis of a finding that the existence of an unrestricted market for such gold in the United States would not be inconsistent with the purposes of the Gold Reserve Act.

The basis upon which Congress acted in enacting the Gold Reserve Act of 1934 and the monetary policies established by that Act are dealt with in II above. It is believed that the Supreme Court has long since disposed of any constitutional objections to the exercise by Congress of extensive authority over gold.

The source of congressional power to regulate the price and sale of newly-mined gold under the Gold

Reserve Act of 1934 (48 Stat. 337, codified in scattered sections of Title 12 and Title 31 of the United States Code) has been held to be conferred by the United States Constitution, Article I, Section 8, Clause 5, 18, "to coin money, regulate the value thereof" and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." Questions raised by the appellant as to the scope of this power and as to the competency of the Congress to delegate to the President and the Secretary of the Treasury, broad regulatory powers in this field are no longer open. *Perry v. U. S. supra; Legal Tender Cases* (1870), 12 Wall. 457; *Raffino v. U. S.,* 9 Cir. 1940, 114 F.2d 696; *U. S. v.* 71.41 *Ounces Gold-Filled Scrap,* 2 Cir. 1938, 94 F.2d 17; *Uebersee Finanz Korp. v. Rosen, supra; Alaska Juneau Gold Mining Co. v. U. S. supra;* and see *Woods v. Cloyd W. Miller Co.* (1948), 333 U.S. 138; *Bowles v. Willingham* (1944), 321 U.S. 489 at 517; *Hamilton v. Kentucky Distilleries Co.* (1919), 251 U.S. 146; *Farber v. U. S.,* 9 Cir. 1940, 114 F.2d 5, cert. den. (1940), 311 U.S. 706.

Gold is one of the important factors determining the value and supply of money in the United States today. By virtue of the statutory requirement set forth in 12 USC 413, the Federal Reserve banks hold gold certificates equal to at least 25% of their note and deposit liabilities. Since these certificates are issued against gold held by the Treasury, the gold stock of the United States in the Treasury serves as an ultimate limitation on the total supply of Federal Reserve credit, and thus ultimately of the supply of money and credit

in the United States since the commercial banks are also required to hold reserves in the form of deposits with the Federal Reserve banks against their own deposit liabilities (12 USC 462).

It is the policy of the U. S. Government to buy and sell gold in transactions with the governments and central banks of foreign countries for the settlement of international balances and other legitimate monetary purposes at the official price of $35 per fine troy ounce (exclusive of handling charges). (Statement of W. Randolph Burgess, Deputy to the Secretary of the Treasury, Hearings of a Subcommittee of the Senate Committee on Banking and Currency on Gold Reserve Act Amendments, 83d Cong., 2d Sess., 1954, p. 17.) Gold accordingly may be purchased from the United States by the monetary authorities of other countries to settle their balances with each other against payment for the gold in dollars and conversely they may settle balances with the United States by obtaining dollars through the sale of gold to the Treasury. In more technical terms, the United States is maintaining an international gold bullion standard, which sets the exchange value of the dollar in terms of gold.

Evidence of the importance of the willingness of the United States to buy and sell gold at a fixed price in transactions with foreign governments and central banks is the fact that this practice is deemed to fulfill an obligation undertaken by the United States in its acceptance of the Articles of Agreement of the International Monetary Fund to permit exchange trans-

actions within the margin of parity established by the Fund. Article IV, § 4, of the Articles of Agreement of the International Monetary Fund imposes a requirement that members permit within their territories exchange transactions with currencies of other members only within a certain margin from par value for their currencies declared to the Fund. Article IV, § 4 of the Fund Agreement provides that a member which in fact freely buys and sells gold for the settlement of international transactions within the margins established by the Fund is deemed to be fulfilling the obligation of this section. In this way the U. S. is not required to intervene in the market to maintain the parities of other currencies with the dollar except by the device of buying and selling gold in exchange for dollars.

The Treasury's views on all phases of the Gold Regulations and its justification for such regulations were fully set forth on May 29, 1954 at the Hearing on Gold Reserve Act Amendments held by the Subcommittee on Federal Reserve Matters of the Senate Committee on Banking and Currency, by Mr. W. Randolph Burgess, who was at that time Deputy to the Secretary of the Treasury. A copy of these hearings is attached as an exhibit to the memorandum hereinbefore referred to as part of the designated record, and attention of this court is invited thereto, and Mr. Burgess' testimony appears at pages 16-32. He testified as follows regarding the relationship between the dollar and gold and the effect of a free gold market on the currency:

> "It has been said sometimes that the gold in Fort Knox and other mint institutions is idle and

useless. Nothing could be less true. This gold is the legal reserve of the Federal Reserve System against its deposits and currency in circulation. For 20 years the knowledge all over the world that the United States dollar had back of it this stock of gold coupled with the intention and the assured ability to maintain a constant price of gold, was at least one firm basis for measuring world values. It is a major reason why the dollar can be used everywhere to settle international transactions.

"In summary, this is our present gold policy: We are maintaining an assured ability to support a constant relationship between gold and the dollar —a relationship which is as important to foreign countries as it is to us.

"This continung and unchanging link is, in fact, the most important part of our policy. It is more important than the redeemability of currency into gold. It is a point of stability in a world which sorely needs a stable basis upon which to build a secure and healthy international economy. [at p. 18]

"Under such a free market there would be two alternatives: Either the United States Government with its $22 billion in reserves, would stay out of the market, and we would have a gold price that fluctuated up and down depending upon the demand for a relatively small amount of new gold production; or the Government would stand ready to buy and sell gold at the official price to prevent fluctuations. The first alternative would tend in the opposite direction from our ultimate goal—it would be in the direction of more instability instead of more stablity. The second alternative would be, in effect, full convertibility of the currency into gold." [at p. 29]

The views expressed by Mr. Burgess have support among bankers, economists and businessmen. Mr.

Allan Sproul, former president of the Federal Reserve Bank of New York, made the following remarks concerning proposals for a free gold market during an Address* before the Seventy-Fifth Annual Convention of the American Bankers' Association, San Francisco, California, November 2, 1949:

> "The third argument—that the miners of gold should be free to sell their product at the best price they can get—is probably the giveaway. It is the argument that gold should be treated as a commodity when you think you can get a higher price for it, and as a monetary metal and an international medium of exchange when you want a floor placed under its price. I would say that you can't have it both ways. If you want the protection of an assured market at a fixed price, because gold is the monetary metal of the country, you should not ask permission to endanger the stability of the monetary standard by selling gold at fluctuating prices (the gold producers hope higher prices) in a fringe free market. Under present conditions, the only real price for gold is the price the United States Treasury is prepared to pay for it. So long as that is the case, there is no sense in a 'make believe' free gold market, in which possible temporary or short-run deviations from the fixed price of the Treasury might have disturbing consequences.
>
> "Nor is the argument that citizens of the United States should have the same privileges as the citizens of other countries, when it comes to holding or trading in gold, at all convincing to me. It is true that in a number of foreign countries the holding of gold by private citizens is legal, and in some foreign countries strictly internal free trading in

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* This address appears at pp. 448-456, "Monetary, Credit, and Fiscal Policies," Hearings before the Subcommittee on Monetary, Credit and Fiscal Policies of the Joint Committee on the Economic Report, 81st Cong., 1st Sess.

gold is permitted. In many cases, however, this merely represents the shifting around of a certain amount of gold which is already being hoarded in the country, since in practically all of these countries the export and import of gold on private account is either prohibited or subject to license. And, in many countries where gold is produced, some percentage, if not all, of the newly mined gold must be sold to monetary authorities, a requirement which further limits the amounts available for trading and hoarding. These restricted and circumscribed privileges in other countries are no reflection of a loss of inalienable rights by our people. They are attempts by those foreign countries to adjust their rules with respect to gold to their own self-interest and, so far as possible, to the habits of their people, all under the sheltering umbrella of a world gold market and a world gold price maintained by the Treasury of the United States.

"We have deemed it wise to maintain such fixed point of reference, in a disordered world. We have decided by democratic processes and by congressional action, that this policy requires, among other things, that gold should not be available for private use in this country, other than for legitimate industrial, professional, or artistic purposes. We have decided that the place for gold is in the monetary reserves of the country, as a backing for our money supply (currency and demand deposits of banks, and as a means of adjusting international balances) not in the pockets or the hoards of the people. If we want to reverse that decision, the means of reversal are at hand, but it should be a clear cut and a clean cut reversal, restoring convertibility. Providing a dependent free gold market, in which gold miners and a little gold group of speculative traders or frightened gold hoarders (such as those who now take advantage of a provision in the regulations to buy and sell 'gold in the natural state') could carry on their business is not the way to meet the problem."

The Money and Credit Committee of the National Association of Manufacturers, in a pamphlet entitled *The Gold Standard* (April, 1955), expressed doubts about the desirability of a free gold market for reasons similar to those expressed by Mr. Burgess:

> " . . . The gold mining industry insists that it is between the millstones of rising costs and a fixed price. But this was equally true under the gold standard regime, for the mint price for gold was not then adjusted periodically to changes of mining cost of operation. [p. 10]
>
> "A point already noted should be repeated here. That is, because of the fact that the gold dollar is, itself, the standard of value in a monetary system based on gold, there would come a time, at whatever level the so-called 'price' of the dollar might be set in terms of gold, when the gold mining industry would experience the same squeeze as it now feels and against which it now rebels. This is a fortuitous condition which inevitably affects those engaged in the production of the metal which is the basis of the nation's monetary system." [p. 11]

In its conclusions on gold, the Committee stated (at p. 23):

> "4. Regardless of how the present mint price of $35 per ounce came to be established, it has prevailed now for 20 years and it has been integrated with the whole vast fabric of prices, wages, incomes, and costs . . .
>
> "5. The establishment of a free gold bullion market is favored by some as a first step toward resumption, and by others who would go no farther than such a market. The huge Treasury stock presents serious problems, however. The current annual output of gold from domestic mines is hardly large enough to constitute the basis of an adequate free market if the Treasury were to remain neutral.

> On the other hand, participation of the Treasury in the market could defeat the purpose of the plan because of its dominant position as a holder of, and dealer in, gold."

Thus it has been shown that since the founding of the United States (with brief interruptions in time of serious war) the American dollar has been valued in terms of gold. Prior to 1933, this was achieved through the operation of the gold coin standard. In 1934, the Gold Reserve Act discontinued gold coinage in the United States. Since that time gold has served a dual role in the United States monetary system, that of currency reserves and ultimate limitation on the supply of money and credit and also a means of ultimately settling international transactions. The parity of the dollar with gold has been maintained through government regulation of gold transactions and purchases and sales of gold by the government. The importance of gold in the United States' monetary system is further demonstrated by the fact that pursuant to an authorizing Act of Congress, which provides that the par value of the dollar in terms of gold may not be changed without the consent of Congress, the United States has accepted membership in the International Monetary Fund, an international organization set up for the purpose of stabilizing international rates of exchange, etc. (Preamble, Articles of Agreement, International Monetary Fund).

Under the foregoing circumstances, it is clear that the Gold Regulations have a reasonable basis in relation to the monetary policies of the Gold Reserve Act of 1934 and to the powers of Congress over finance and

the currency and thus, such Regulations cannot be considered unreasonable or arbitrary.

IV. The Power of Congress under Art. 1 § 8 of the Constitution Is not Limited to "Coined Money".

1. Appellant's view that the power to regulate the value of money granted to Congress in Art. I, § 8 of the Constitution includes only the authority to regulate the value of coin has been rejected by the Supreme Court. In interpreting congressional authority over the currency system, the Supreme Court has held on many occasions that Congress has complete authority to establish a monetary system and determine and regulate the currency of the country. *Knox v. Lee; Julliard v. Greenman; Norman v. B. & O. R.R. Co.; Nortz v. U. S.; Perry v. U. S.,* all *supra.*

2. Appellant asserts the proposition that gold is an ordinary commodity and is treated as such by the government. As pointed out by Mr. Burgess at pages 18 and 21 of the Hearing, gold is widely used as a means for the settlement of international balances of payments, and the fact that the United States freely buys and sells gold at a fixed price in dollars in the settlement of such international balances is an important aspect of our monetary policy. Treasury purchases and sales of gold at a fixed price in transactions with foreign governments and central banks fulfill an undertaking of this government under an international agreement to maintain a stable exchange value for the dollar in international transactions.

V. Discussion of Appellant's Opening Brief and Case References Not Heretofore Treated.

Appellant proceeds on the theory that she is entitled to mine gold and sell it at a profit as a commodity and that the action of the Government under the Gold Reserve Act of 1934 and Regulations thereunder have tended to limit such a profit by fixing a price which the government will pay for gold and restricting the commerce therein by licensing regulations. She contends such amounts to a "taking" of her property without just compensation.

The fallacy of appellant's theory is based upon her ignoring the basic problem confronting the owners of mines of the metal, which by its nature and man's appreciation of it historically, has acquired the status of a "precious" metal, giving it the attribute of intrinsic worth which makes it susceptible to the governmental use of tying it to the monetary system of the country. While it is true that the United States is not on a gold standard in the sense that our currency notes are redeemable in gold, nor can gold be coined and circulated domestically with a standard weight and fineness for a given minted coin, there is a requirement, as previously discussed, that the Federal Reserve Banks maintain a gold credit of a portion of their issued notes, which serves to set a standard for the currency. A fluctuating price of gold, in terms of dollars would make such a standard meaningless.

As has been previously mentioned herein, the National Association of Manufacturers, in its pamphlet

The Gold Standard, April 1955, points out that because of the fact that the gold dollar is itself the standard of value in a monetary system based on gold (which was the system before the Gold Reserve Act of 1934) there would come a time at whatever level the so-called price of the dollar might be set in terms of gold, when the gold-mining industry would experience the same squeeze as it now feels and against which it now rebels. This is a fortuitous condition which inevitably affects those engaged in the production of the metal which is the basis of the nation's monetary system.

Because the government has not, nor has the appellee herein, who has responsibility for local enforcement of the gold program, subject to the limitation that he can undertake punitive action only through officers of the Department of Justice, physically "taken" anything belonging to the appellant and because appellant has failed to sustain the position that her property has been the subject of a compensable taking by the United States (*Laycock v. U. S., supra*), she has undertaken this oblique attack on the constitutionality of the Regulations by seeking injunction against the Treasury Agent.

In support of her theory of unconstitutionality, appellant relies on decisions or statements for the most part applicable to different conditions of a different time, decided when circulation of gold was not prohibited—cases long since worthy of their place in legal history as evidence of the elasticity of the common law of the land.

Appellant propounds a doctrine of strict constitutional construction and other doctrines long ago rejected and a definition of money which ignores other than coin. She ignores that the term "money" in common understanding connotes a medium of exchange, even though currency, not coin. *In re Missouri-Pacific Ry. Co.,* 7 F. Supp. 1, 10 Cir., E.D. Mo., E.D., 1934, aff. *sub nom Norman v. B. & O. R.R. Co.* (1935), 294 U.S. 240; *Emery Bird Thayer Dry Goods Co. v. Williams,* 8 Cir. 1939, 107 F.2d 965, cert. den. (1940), 309 U.S. 655. Appellant ignores the Gold Cases reported in 294 U.S., *Norman v. B. & O. R.R. Co.; Nortz v. U. S.;* and *Perry v. U. S.,* all *supra.* Appellant also ignores the opinion of the Supreme Court which recently reversed the Court of Claims opinion cited by appellant of the *Central Eureka Mining Co. v. U. S.* The Supreme Court decision is *U. S. v. Central Eureka Mining Co.* (1958), 357 U.S. 155.

Appellant contends there is no power of the government to fix the price of gold. As has been previously pointed out, when gold is the basis of the monetary system, whether it be a gold standard or other basis, the price which the government will pay for gold will fix the value thereof because no one will sell gold for less, and if commercial users can obtain gold from the government at such price, they will not pay more. Thus the power to fix the sum to be paid in terms of the unit of value in common exchange for a given weight of a certain fineness of gold will automatically fix the price of that commodity unless the supply available from the government is less than the demand of com-

mercial users. Should the appellant suggest that there are people who would desire the commodity for other than the commercial uses, appellant would emphasize the circumstance which gave rise to the Presidential Proclamations and the Gold Reserve Act. Apart from commercial uses, those seeking gold would ordinarily seek it only as a store of treasure which they otherwise accomplish by the use of the currency or securities or property that they may purchase therewith. If the nation's potential gold supply were withdrawn in this fashion, the currency could be contracted and might ultimately become less acceptable as a measure of stored wealth and ultimately as a medium of exchange, to the disruption of the present monetary system of the country.

Appellant also contends that no statute fixes the price of gold or authorizes any department of the government to do so. Appellee suggests that the Regulations do not fix the price of gold, but fix the price which the United States will pay for it at the mint and therefore has the end effect of fixing price, as have previous government monetary systems. It is also suggested, as hereinbefore discussed, that the Regulations are pursuant to and reasonably related to the constitutional congressional directions with regard to the Secretary of the Treasury's responsibilities to the monetary system. That this is not an unlawful delegation of legislative authority, as contended by the appellant, is established by the case of *Uebersee Finanz Korp., etc. v. Rosen, supra.* See also *U. S. v. O'Toole,* D.C. R.I. 1951, 101 F. Supp. 123. The appellant contends that setting the gold price

deprives her of her property without due process of law and contrary to the Fifth Amendment to the Constitution. The government must, as an incident to the use of gold as a monetary standard, achieve the result of fixing the price of gold. If this is injurious to the appellant, it is a consequential and incidental result not amounting to a taking in the constitutional sense.

The appellant also contends that setting the price of gold in paper money and as a condition of a license to produce gold that gold be delivered to the Treasury Department at that price, is unconstitutional and confiscatory. Such Regulations are not unconstitutional if reasonably related to the constitutional statute concerning money. It is submitted that they are, as the District Court has found, reasonably related to this power. There is no confiscation involved, just as there is no taking involved. As previously pointed out, appellant is not required to sell to the mint and no price is prescribed for her sale to licensed users of gold.

Appellant also contends that the establishment of such price discriminates against the appellant and other producers to the benefit of users of gold. If the regulations have such indicated result there is certainly no discrimination between members of the class concerned by the Regulations. In addition, this is no more true than it was when the United States was on a gold coin standard at times when the cost of production of gold mounted by reason of economic conditions which may have given rise to increased costs of production. Even a gold standard does not affect the basic economic laws

of supply and demand and other factors influencing the amount of goods and services that a measured medium of exchange will buy. The production of gold is not immune from these influences and the government, unless it wishes to subsidize gold production, which it is not required to and has not undertaken to do, will not guarantee gold mining as a profitable venture. The paper money which the government now exchanges for gold at the mint is the medium of exchange which is the measure of all goods and services in commerce of the country. As such, the payment in terms of such currency is not confiscatory. The Regulations are seated in statutes (see 12 USC 213).

Appellant contends that the control of gold has no relationship to maintaining the parity of the dollar. For reasons hereinbefore submitted, it is urged that appellant is in error. Appellant contends that Congress has no power to fix the value of paper currency. If the government has power to fix the value of any of its monetary media, it has the power to fix the value of the currency, even though it may not be redeemed in gold under the statute upon which it is based. The value of the paper money depends upon the credit of the country, which will ultimately be the situation in any case in which the money is not, of itself, of full intrinsic value. The fallacy of appellant's reasoning is her adherence, contrary to decision, to the theory that the constitutional power of Congress is limited to regulating the value of *coined* money.

Appellant contends that gold as a commodity cannot be money and argues that because our currency is

not redeemable in gold, we have no money, and therefore gold can only be a commodity, which the government has no power to regulate. Gold is not required to be circulating money to affect the parity of gold with the dollar in exchange under a system of a reserve standard. Appellant contends that when gold was money in the sense that it was exchanged in coin, the control thereof was unnecessary to maintain parity. It does not follow that regulation of mining of gold is not necessary to maintain the parity of the currency with the dollar and in any event, it does not appear unduly speculative to assume that the result of coining gold now, absent a system enabling full redemption, would result again in hoarding of gold coins to the depreciating of the currency and resultant destruction of gold parity and the contraction of available gold for settling world trade balances.

Appellant emphasizes that in the past, gold was a commodity for which the government paid varying prices. Appellant cites as illustrative thereof that in 1895 the government paid a premium in bonds for gold. The government does no less today when it issues bonds for the common exchange media, the currency dollars of the country (see 31 USC 462).

Appellant contends also that Title 31, USC, § 463, prevents contracts measured by gold and that they thereby abolished the standard of money. The statute merely is a means of protecting the currency as legal tender by requiring that contracts be not dependent upon irredeemable gold as the measure of payment. The statutes does not abolish the standard of money,

which is fixed by the requirement that the Federal Reserve Banks have a credit reserve of 25% in gold certificates for the issue of their notes. *Arthur v. Richards* (1874), 23 Wall. 246; *Bronson v. Rodes* (1868), 7 Wall. 229, were decided, as pointed out by *Norman v. B. & O. R.R. Co., supra,* at p. 300, when gold was still in circulation and no act of Congress prohibiting the enforcement of such clauses had been passed. The court in the *Norman* case, commenting on *Bronson v. Rodes, supra,* said:

> "In Bronson v. Rodes, supra, page 251, the court held that the legal tender acts of 1862 and 1863, apart from any question of their constitutionality, had not repealed or modified the laws for coinage of gold or silver or the statutory provisions which made those coins a legal tender in all payments. It followed, said the court, that 'there were two descriptions of money in use at the time the tender under consideration was made, both authorized by law, and both made legal tender in payments. The statute denomination of both descriptions was dollars; but they were essentially unlike in nature.' Accordingly, the contract of the parties for payment in one sort of dollars, which was still in lawful circulation, was sustained."

The case of *Guaranty Trust Co. v. Henwood* (1939), 307 U.S. 243, cited by appellant, who quotes from the dissenting opinion, as to the purpose of the gold legislation, in the majority opinion establishes the power of Congress to recall and control the national currency and to make that currency legal tender for all purposes, including payment of domestic dollar obligations with exceptions for payment in foreign currency. The court says, "Whether it was 'wise and expedient' to do so

was under the constitution a determination to made by the congress." *Pennsylvania Coal Co. v. Mahon* (1922), 260 U.S. 393, simply held that a state statute which interfered with existing coal mining rights to prevent subsidence of lands, streets and private property, was not a valid exercise of the police power because the regulation went too far and amounted to a taking. The key to the opinion was in the court's remark on facts arising in mining country, where the court said, "Insofar as private persons or communities have seen fit to take the risk of acquiring only surface rights, we cannot see that the fact that their risk has become a danger warrants giving to them greater rights than they bought."

Forbes v. Gracey (1876), 94 U.S. 762, was an attempt to resist taxes of the State of Nevada imposed upon property of the Consolidated Virginia Mining Company on the ground that the title to the land from which the mineral was taken was in the United States and therefore not subject to state taxation. The court held that the tax was upon the yield and the levy upon the personal property and the tax could therefore be imposed. Its relationship to the issues at hand appears remote.

Erhardt v. Boaro (1885), 113 U.S. 527, was simply a question of notice between the two claimants to a mineral claim. *Heydenfeldt v. Daney Gold & Silver Mining Co.* (1876), 93 U.S. 634, was a case turning upon the power of the State of Nevada to make a grant of land which had not been yet surveyed by the United States, it being in a section commonly set aside for common school purposes. These two cases appear to

be not related to the issues herein. The plaintiff's citation of *Central Eureka Mining Co. et al v. Court of Claims* (1956), 138 F. Supp. 281, ignores the reversal in *U. S. v. Central Eureka Mining Co. et al, supra. U. S. v. GMC* (1945), 323 U.S. 373, was a condemnation action for a leasehold interest of a portion of a warehouse in which the tenant-lessee, being dispossessed, was obliged to incur substantial moving expenses. The court did not limit the compensability to the bare appraisal of the value of the space. While some language therein may comfort the appellant, the case is not factually such as to be of help to appellant herein. *Terrace v. Thompson* (1923), 263 U.S. 197, merely upheld the power of the State of Washington by statute to disqualify aliens who had not declared intention to become citizens, from holding interest in lands. The case is not in point.

Meyer v. Nebraska (1923), 262 U.S. 390, invalidated a Nebraska statute which was a basis of a criminal action against Meyer for teaching a foreign language to children in the schools of Nebraska. The court said that this was an interference with the calling of modern language teachers and with the obligations of pupils to acquire knowledge and with the power of parents to control the education of their own. It appears remotely connected, if at all, with the claimed right to mine gold at a profit.

It appears established law that under the circumstances of *Williams v. Fanning* (1947), 332 U.S. 490, and *Colorado v. Toll* (1925), 268 U.S. 228, it would not be necessary to join the Secretary of the Treasury

as a necessary party; however, the facts and circumstances herein are not such as in those cases. In *Colorado v. Toll,* the court found that the act was void as an intrusion upon the power of the state and injunction against the superintendent could effectively provide a remedy. In *Williams v. Fanning,* the postal fraud order was enforceable by local interpretation and local action and the injunction could effectuate itself on the subordinate postal employee. Under the facts in this case, if the Regulation be valid, there is no room for interpretation by the local Treasury Agent and preventing his enforcement of the law could affect the monetary system of the country itself, as distinguished from the enforcement of a local traffic regulation in a national park or the circulation of a particular bit of mail matter. *Ickes v. Fox* (1937), 300 U.S. 82, involved the question of the necessity of the United States as a party and was against the Secretary of the Interior in a situation which the court held did not amount to action against the United States because the Secretary of Interior had issued a wrongful order with respect to property rights not in the United States but vested in others.

Monongahela Navigation Co. v. U. S. (1893), 148 U.S. 312, was a condemnation action in which the lower court had not allowed compensation for a franchise to operate a toll lock. Congress had legislated so as to cloud the right to compensation for the franchise and the court held that the compensation for the taking was not a proper function of the legislative branch. If appellant's case involved a taking, the case might be

in point. Appellee submits that there is no taking and that the case fails to aid appellant.

People v. Supervisors (1868), 7 Wall. 26, is a case concerning the taxability by states of the United States notes under the Loan and Currency Acts of 1862 and 1863. The court said:

> "We have already said that these notes are obligations. They bind the national faith. They are therefore strictly securities. They secure the payments stipulated to the holders by pledge of the national faith, the only other ultimate security of our national obligations whatever form they may assume."

This case, like some previously discussed, was decided when gold coins were in circulation.

The Legal Tender Cases, supra, established the validity of U. S. currency as legal tender. The court said that the government is to pay the debt of the union and must be authorized to use the means which appear to itself most eligible to effect that object. It has consequently a right to make remittances by bills or otherwise and to take those precautions which would render the transactions safe. The court points out the circumstances of stress which led the Congress to make Treasury notes legal tender and suggests that if it be conceded that some other means might have been chosen as the accomplishment of these legitimate and necessary ends, the concession does not weaken the argument that it is a constitutional power. Congress had the choice of means to legitimate ends, if appropriately adapted to that end, though perhaps in different degrees. It is not for the court to say which means

should have been adopted. The rules of construction do not require that the relationship between the means and the end shall be direct and immediate.

Appellant stresses that there may no longer be a basis for enforcement of the Regulations because the emergency may no longer exist relating to the powers under the Trading with the Enemy Act, and cites *Bauer v. U. S.*, 9 Cir. 1957, 244 F.2d 794, in support thereof. The *Bauer* case was a criminal action based upon regulations which imposed criminal sanctions upon certain dealers in gold and the court remanded the conviction for retrial to ascertain whether or not the emergency during which the regulation was adopted had passed away. That certain penalties might be invalidated would not invalidate these regulations, because, as is stated in that case:

> "The present contention of appellant is that there is no criminal statute or regulation in force which penalizes the possession of gold bullion. This is based upon the argument that the economic emergency which resulted in the adoption of Executive Order 6260, under authority of 12 USCA, Section 95a, no longer exists. It is suggested that there is no national economic emergency at the present time, and the second, not only is there no war emergency, but that, by joint resolution and by Presidential Proclamation, the war emergencies have ceased to exist. *We find that the policy of preventing the retention and possession of gold bullion is a part of the national policy of the United States. The Gold Reserve Act, however, by which this policy is established, imposes no penalties except that the gold acquired or held in violation shall be forfeited and the person failing to comply shall be subject to a penalty equal to*

twice the value of the gold so seized or involved." (Emphasis supplied).

Appellee urges that the Regulations reasonably related to that policy under the Gold Reserve Act would not appear to depend upon an emergency or other authorization than the implied requirements and the express ones of the Gold Reserve Act of 1934 insofar as the issues of this case are drawn. The Regulations under that Act are valid. They are the ones of which appellant complains.

CONCLUSION

The United States has a national policy of restricted dealing in gold, for the maintenance of the monetary system of the land. The policy necessarily requires restrictions on the treating of mined gold and the circulation of it. This policy is bound in with the Bretton Woods Agreement and the Bretton Woods Agreements Act, to which many countries are tied. It is suggested that all the appellant would ask this court to do is to change the monetary structure of the world. Appellee suggests that the court is not going to embark upon the legislative function of striking down the present monetary system and substituting its own.

The appellant is not entitled to relief. The judgment of the District Court should be affirmed.

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